

McWhorter, Scott

From: Taylor, Katherine
Sent: Friday, December 18, 2015 12:05 PM
To: TROMBADORE, CLAIRE; Miller, Amy; Rodriguez, Roberto
Cc: Scott, Jeff; Johnson, Kathleen; Barhite, Steven; Cooper, Pam (Separated 1/1/16); Grisier, Mary; Higuchi, Dean; Zito, Kelly; Milbourn, Cathy
Subject: Call with NBC related to R9 oversight of Hawaii Department of Ag Pesticide Program

I want to give you an update on yesterday's call with Tim Sandler of NBC. Tim had asked Dean Higuchi to set up a call with Pam Cooper on EPA's oversight of Hawaii Department of Ag. We were joined by Kelly Zito, Monica from HQ OPA, and Kathy Milbourn from HQ's Office of Media Relations. The call went well. The NBC interest has stemmed from conversation with a Maui citizen, Brad Edwards, who has a number of concerns related to the State's enforcement program. As you can see in the background below, Pam has been talking to Brad about his concerns for several weeks before NBC became interested. We discussed State Oversight in general with some specifics related to Hawaii. A full summary of the December 18th call, a December 16th internal prep call, and a December 14th call between HDOA and the Land and Enforcement Divisions to talk about Brad Edward's concerns follow.

There are two major follow-ups from the December 17 call:

- 1) **May I ask the Enforcement Division talk to Dean about setting up a time to talk about some enforcement questions?** Pam answered some general enforcement related questions. The summary below speaks to the conversation in detail.

There were a number of questions we didn't answer when asked by the reporter because we didn't have the numbers off the top of our heads or because they spoke to more specific R9 enforcement interests

The unanswered questions and answers are: On average, how many Inspections are done by the state? Each inspector conducts approximately 108 inspections/year for a total of 432.

On average, how many enforcement actions are taken each year? In FY15 there were 4 civil complaints and 40 warnings.

I suspect there will be some other questions about our enforcement oversight and plans for working with Hawaii that will come up during the next conversation.

- 2) **The program will also be providing a little more information through Dean over the next few days.**

Land Division will keep you in the loop on anything we do to follow up. Please keep us in the loop on your follow up. I would like to sit in on the call if you have another one with the reporter. It is clear that if this story develops, both Divisions will be involved.

Background from December 16 internal EPA call to prep for NBC call.

Dean was working on setting up a call to talk to an NBC reporter, Tim Sandler, to give some background on the EPA oversight of the Hawaii Department of Ag program in anticipation of a potential story.

We believed that this call was related to a concerned citizen on Maui. Pam has been talking to this individual, Brad Edwards, for a couple of weeks. He is concerned about Hawaii Department of Ag response to a number of things. The one that seems to be carrying most of the weight at this time, is about a drift incident(s) related to HC&S Sugar Cane growers. The caller has asserted to Pam that the Department of Ag is “protecting” the company by not talking cases. The particular case he discussed is over 2 years old and no enforcement action has been taken by the State. Pam and Mary, the Hawaii PO have spoken to the first line HDOA manager of the Pesticide Program, Tom Matsuda, to discuss the our concerns about an enforcement backlog, and the caller’s concerns several times in the last weeks. This is not a new concern. We have been concerned about Hawaii’s performance related to case backlogs for several years. Our concerns have been expressed in the End-of-Year review in FY14, a number of conversations, and will also be the subject of the FY15 End-of-Year. Some improvement has been seen and Hawaii in the process of hiring new staff, but a significant backlog still exists. We can talk about raising the issue above Tom when we speak later today. We have also talked to the Enforcement Division about taking on some of the old cases but, at this point, this is not in their plans. So far, Pam’s conversations with Brad have been cordial and productive.

Brad has also raised questions about road side spraying by the Department of Transportation. HDOA has issues several notices to DOT about it. DOT is spraying with a weed kill that requires that bystanders be prevented from entering the area until the spray has dried, which is challenging in this application. Brad wants the DOA to file an enforcement complaint against DOT. Rather than take that action, the State is looking into what chemical can be sprayed without this requirement. We expect that the switch will solve the current problem. This issue seems to have taken a back-seat to other issues for Brad, at least at this point.

Pam and I will join Dean and Monika from OPA Headquarters on a call with Tim Sandler of NBC as soon as Dean sets it up. Today, we discussed what we will say about the situation. We will speak about how we oversee the States in carrying out the Pesticide program and what options we have at our discretion to deal with non-performance. We will not be speaking specifically about any on-going cases or specific concerns about the program.

Summary of December 17 Call
Summary of call with Tim Sandler, NBC News
December 17, 2015
Hawaii Pesticide Use Issues

Attendees:

Monica ?– OPA - HQ
Kathy Milbourn – Office of Media Relations - HQ
Dean Higuchi – EPA Press Officer – HI Office
Kathy Taylor – R9
Pam Cooper – R9

Purpose

The purpose of the call was to provide background information to NBC reps on pesticide use oversight in Hawaii. The end point is a potential NBC Nightly News segment, or possibly a Dateline episode.

Summary

Tim explained that they were looking for information on EPA's oversight role for pesticide use in Hawaii. Pam described the concept of Primacy, that states develop their laws and regulations and then have the primary enforcement responsibility in the State. EPA provides grant funds to HI Department of Agriculture, and oversee the activities that we negotiate with regard to enforcement and pesticide program areas such as water quality, worker safety and outreach and education. We review the program two times per year. They asked how much we give HI for pesticide activities – our response was approximately \$300,000 per year.

Inspectors / Enforcement in Hawaii

The next set of questions were regarding numbers of inspectors, inspections/year and enforcement actions per year.

Inspections – each inspector conducts approximately 108 inspections/year

Enforcement Actions taken – (FY15) 4 civil complaints, 40 warnings.

Kathy indicated that we will need to have a follow-up call including representatives from the Enforcement Division. Pam explained that there are four inspectors currently in Hawaii. HDOA is actively recruiting for additional inspectors on Oahu and Kauai.

They asked about our level of oversight. Pam explained that we look at a sampling of all of the negotiated work, and discuss areas that need improvement.

Enforcement Actions – they asked how many – we did not have a number, but said we would get back to them. They asked if we had heard about allegations of HDOA not moving swiftly enough to enforce against violations. We had. Kathy described our process for identifying problems, and how we will have conversations with HDOA, but don't immediately share those conversations with outside parties. Issues are elevated to the leadership at HDOA as needed. Primacy revocation is an option, decreasing/increasing grant funds is also an option. Budget constraints exist at both the Federal and State level.

We were asked to describe a typical day for an inspector. Pam described the reality that HI investigates all tips and complaints, which can take away from what an inspector had actually planned to do in the field over the course of a day. Inspection reports are written up by the inspector and sent to the case developer, who decides if the violations warrant an enforcement action. Cases that are pending are not shared with the public; only those that have been closed. EPA understands that there are cases that have been open for a long time.

Overspray Incident on December 2, 2015

They asked if we were aware of a December 2 drift incident where someone claims they were sprayed. Mr. Sandler described a mixture of pesticides that were allegedly used that day, and asked if that was a legal thing to do. Pam explained that there is a legal practice of "custom blending" that is approved at HQ. We need to do some further work with OPP to assess this. All registration of pesticides is done at HQ. We will also talk with OPP re: windspeed requirements.

They asked if we were aware of a large amount of Atrazine that was purchased on Maui in 2014. We said that we were aware of it, but that sales do not equal use. There is no pesticide use reporting in HI. We said we would get back to him with whether or not there is a cap on Atrazine use/year.

Pam described preemption laws, and that in HI, locals (counties) cannot pass laws that are more restrictive than the state, and that was why the bill on Kauai (2491) was overturned. Pam referred Tim to the Beyond Pesticides website, which describes the state of preemption laws in the US.

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Birth Defects Questions

Tim asked if we had spoken to any doctors, or had read about studies from Kauai that showed high levels of birth defects, and that inferred a relation to pesticides. Pam indicated that Kauai had petitioned the ATSDR to have a look at birth defects on Kauai, and ATSDR accepted the petition. We don't know the status of that petition currently. Pam and Kathy reminded him of the difficulty of proving a relationship between birth defects and pesticides, and gave examples of several cancer clusters in CA that could not be easily explained by simply blaming pesticides.

EUPs

Tim asked if we knew about experimental use permits in Hawaii, and how many there were. Pam said that there are 2-3 active EUPs currently. Tim cited Hawaii's EUP regulations (466.47) which we were not familiar with but said we would research. He asked about plot size restrictions (Federal EUPs restricted to 10 acres or less).

Glyphosate

Asked if we were aware that more glyphosate was used in Hawaii than in four states combined(?) We again said that there is no use reporting in HI, so it would be difficult to tell.

Closing

Kathy told him that he should contact HDOA for some of his questions, and should direct his call to Scott Enright – Administrator. Kathy suggested that another call be scheduled to include the enforcement division reps.

Summary of call on Monday, December 14th Call with Tom Matsuda

On December 14, Scott, Rob and Mary had a call with Tom Matsuda to get an update on:

DOT right of way spray complaints

Drift complaints from neighbors of HC&S Sugar

Tom is working to help DOT find products that do not contain label language to the effect of "...keep people and pets out of area till sprays have dried." Rob suggested that it is difficult to do both compliance assistance and enforcement, and that enforcement is the goal.

HDOA has issued warning letters to State/County DOT over the past several years. State agencies have what is known as "sovereign immunity", however, so that they cannot sue another state agency. They will, however, fine individual applicators who work for the state if they continue to have violations.

Scott/Rob let Tom know that we are interested in any high priority cases they want to refer to us, but would prefer those from FY14 or later. Any cases that might be difficult for HDOA to take can also be sent to us (such as sister agencies, drift, etc.)

Tom let us know that they have a backlog of approximately 700 inspection reports. They have hired a short-term employee to help them review, and will pull in staff to review/prioritize reports, too. Oldest files date back to 2008. Rob said that our priorities for this year include WPS, Imports and Product Integrity.